

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 11/3/2015	(3) CONTACT/PHONE Airlin M. Singewald, Senior Planner / (805) 781-5198	
(4) SUBJECT Hearing to consider an appeal by James Bigelow of the Planning Commission's approval of the application of Ethnobotanica for a Minor Use Permit (DRC2014-00070) to establish a medical marijuana dispensary and construct related tenant improvements in an existing building at 2122 Hutton Road, approximately 3 miles south of Nipomo; exempt from CEQA. District 4.			
(5) RECOMMENDED ACTION It is recommended that the Board adopt and instruct the chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Commission approving Minor Use Permit DRC2014-00070 based on the findings in Exhibit A and conditions in Exhibit B of Attachment 1 (Board of Supervisors Resolution with Findings and Conditions).			
(6) FUNDING SOURCE(S) Appeal fee	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>90 min.</u> ) <input type="checkbox"/> Board Business (Time Est. <u>    </u> )			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)  N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: <u>                </u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 4			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Airlin M. Singewald, Senior Planner

VIA: Bill Robeson, Deputy Director – Permitting

DATE: 11/3/2015

SUBJECT: Hearing to consider an appeal by James Bigelow of the Planning Commission's approval of the application of Ethnobotanica for a Minor Use Permit (DRC2014-00070) to establish a medical marijuana dispensary and construct related tenant improvements in an existing building at 2122 Hutton Road, approximately 3 miles south of Nipomo; exempt from CEQA. District 4.

## **RECOMMENDATION**

It is recommended that the Board adopt and instruct the chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Commission approving Minor Use Permit DRC2014-00070 based on the findings in Exhibit A and conditions in Exhibit B of Attachment 1 (Board of Supervisors Resolution with Findings and Conditions).

## **DISCUSSION**

### **Background**

On July 9, 2015, the Planning Commission heard and approved a request by Ethnobotanica for a Minor Use Permit to establish a medical marijuana dispensary and construct related tenant improvements in an existing 2,636 square-foot commercial/office suite, which is part of an existing 11,675 square-foot building. The proposed project is within the Commercial Service (CS) land use category and is located about three miles south of Nipomo in a predominantly commercial / industrial business park area.

The Planning Department Hearing Officer is typically the review authority for minor use permits; however the Planning Director elevated this project to the Planning Commission based on the controversial nature of medical marijuana and concerns raised by the South County Advisory Council.

The Planning Commission approved the proposed project on July 9, 2015 (4-1) based on the project's compliance with applicable ordinance provisions, including the location criteria for medical marijuana dispensaries, and conditions of approval including a security plan to address neighborhood compatibility and public safety concerns. Since this would be the first dispensary to operate in the county, the Commission added a condition (#14) for the applicant to return in two years for a hearing to evaluate how the dispensary is operating and any condition compliance concerns. The Commission also modified condition #3 and added condition #15 to ensure that the project's proposed security plan is submitted for review and approval with the tenant improvement plans and implemented for the life of the project.

On July 20, 2015, James Bigelow filed an appeal (Attachment 2) of the Planning Commission's decision approving Ethnobotanica's Minor Use Permit. As the basis for the appeal, Mr. Bigelow cites several letters, emails, and a petition from residents of the Costa Pacifica Estates subdivision opposing the proposed dispensary. This correspondence, which was reviewed by the Planning Commission before the July 9, 2015 hearing, raises numerous concerns over the proposed project and marijuana use in general. This staff report mainly focuses on those concerns that are related to land use compatibility (e.g. potential crime and traffic impacts) and addresses the legal status of medical marijuana. The correspondence referenced in the appeal also raises broader issues, such as potential harmful health effects of medical

marijuana, which are not necessarily land use related and are therefore not addressed in this staff report.

### Ordinance Compliance

The Planning Commission approved the proposed medical marijuana dispensary after reviewing the project's compliance with Land Use Ordinance Section 22.30.225, which establishes location criteria and operational standards for medical marijuana dispensaries.

As outlined in the attached Planning Commission staff report (Attachment 4), the proposed dispensary complies with the location criteria for medical marijuana dispensaries because it is located: a) outside a central business district, b) within a commercial land use category, and c) more than 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The nearest sensitive use is Preisker Park located about 4,300 feet to the south and across the Santa Maria River, in the City of Santa Maria. The project is not located near any sensitive uses in the community of Nipomo, which is about 3 miles to the north of the project site. The nearest sensitive use in Nipomo is the public library located about 4 miles to the northwest. The project site is located about 1,500 feet east of the Vista del Rio subdivision; however, the Land Use Ordinance does not establish a minimum separation distance for dispensaries from residential areas.

In addition to the location criteria, Section 22.30.225 establishes limitations on use (hours of operation, age restrictions for customers and employees, prohibits paraphernalia sales and onsite cultivation), and requires a security plan, displayed notice (for age restriction and prohibiting onsite consumption), and notification to the Sheriff's Department with the name, location, and contact information of the owner/operator of the dispensary. The project application includes a detailed security plan meeting the required criteria and the project is conditioned to comply with the limitations on use, displayed notice, and notification to the Sheriff's Department. These provisions are also reflected in Ethnobotanica's proposed business plan.

### Appeal Issues

The appeal form does not enumerate or specify particular reasons for opposing the project; rather it references some of the correspondence that was submitted prior to the Planning Commission hearing as the basis for the appeal. It should be noted that all the information attached to the appeal was considered by the Planning Commission before approving the project.

In responding to the appeal, staff focuses on comments that are related to the required findings for a Minor Use Permit (e.g. compliance with the Land Use Ordinance and General Plan, neighborhood compatibility, and public safety and welfare). While the legal status of marijuana is debatable, the staff report narrows this discussion down to compliance with the County's adopted ordinance allowing for medical marijuana dispensaries (subject to a permit process and compliance with applicable regulations), the 2008 California Attorney General's Guidelines pursuant to Proposition 215, and new laws enacted during the last California legislative session.

**Issue #1: The project will attract crime, law enforcement response times will be too slow due to the project's location on the edge of the county, and medical marijuana from the dispensary could be diverted to recreational / illegal use.** This appeal issue states that, with large amounts of cash and marijuana stored on site, the proposed dispensary would be a target for robberies and other crimes. According to the appeal, law enforcement response times could be slow since the nearest Sheriff substation (the South Patrol Station) is located in Oceano. The San Luis Obispo County Sheriff's Office echoes this concern in its project referral response stating that the dispensary could result in increased calls for service and reported crimes, which would strain the Sheriff's limited resources (Sheriff Deputy Rob Reid; January 20, 2015). Alice Patino, Mayor of Santa Maria, states in one of the opposition letters: "Allowing a target for violent crime to be built so far from SLO County's current patrols, but so close to Santa Maria would be irresponsible as it would likely place a burden upon Santa Maria Police and Santa Barbara Sheriff's Department." The opposition letters also cite examples of violent crimes committed at medical marijuana dispensaries and raise concerns that marijuana from the dispensary could be diverted for recreational / illegal use. The opposition letters conclude that this criminal activity will degrade quality of life in Nipomo and be detrimental to public health, safety, and welfare.

**Staff Response:** The appeal documentation provides anecdotal connections between dispensaries and increased crime levels but no empirical studies linking dispensaries and higher criminal activity has been submitted to the administrative record. However, as with other land uses that store large amounts of cash onsite, such as a bank, it is reasonable to

assume that the proposed dispensary could be a target for robberies. This is a key reason why the County Land Use Ordinance requires an application for a medical marijuana dispensary to include a detailed security plan. The 2008 California Attorney General Guidelines for medical marijuana also encourages a security plan.

Ethnobotanica's proposed security plan, which is similar to that of a bank, includes indoor/outdoor video surveillance and alarm system by Sentinel Security and an onsite guard by Bomar Security for 10 hours per day, 7 days per week. The security plan indicates that security personnel will assist in opening and closing of the facility, including escorting employees to their vehicles after closing. The plan also identifies that security personnel will be responsible for verifying that each person entering the facility is a medical marijuana patient, caregiver, employee, or other allowed person. According to Ethnobotanica, the security plan would not only protect life and property but would also deter crime by establishing a security presence in the area.

One of the letters in the appeal states that "...due to the remote location of the proposed dispensary the response time of deputies to a crime at that location would be from 10 to 30 minutes. Obviously, this delay of emergency response puts the safety of the public in greater jeopardy." However, the Sheriff's Department would most likely respond to an incident from their nearest patrol car location (not necessarily from the South Patrol Station in Oceano). According to the Sheriff Department's FY 14-15 Performance Measure results, the Sheriff's Department responded to high priority, life threatening calls for service in the South Station area of the county within 10 minutes 82 percent of the time. Also, in a life threatening emergency, the Sheriff would request mutual aid from the Highway Patrol or other nearby agencies (e.g. Santa Maria or Santa Barbara County), although it should be noted that these agencies aren't required to respond.

In 2010, staff contacted Danny Kato, Senior Planner for the City of Santa Barbara, who is responsible for administering that jurisdiction's medical marijuana ordinance. At that time, Mr. Kato confirmed the absence of criminal activity for one of Santa Barbara's legally established dispensaries. When staff recently contacted Mr. Kato for an update on crime activity associated medical marijuana dispensaries, he indicated that no new information is available because the City just approved (on June 4, 2015) the first dispensary since they all closed several years ago.

In addressing concerns about increased crime levels, the applicant submitted a summary of a UCLA study published in the Journal of Studies on Alcohol and Drugs, which found that "across Sacramento neighborhoods, there was no evidence that having a higher density of medical marijuana dispensaries was related to higher rates of crime or property crime." However, this study does not comprehensively or conclusively address the crime question, as it only looked at one city during one point in time.

The lack of experience with a medical marijuana dispensary is one reason why the Planning Commission was compelled to add condition #14, which would require a reevaluation of the dispensary in two years.

**Issue #2: Traffic generated by the project will negatively impact the surrounding neighborhood.** One of the letters referenced in the appeal states "The proposed location is near the intersection of Highways 166 and 101, just north of the Santa Barbara County line where the increased traffic would have a negative impact on that frequently congested intersection." Similar concerns were raised by the South County Advisory Council and during public testimony at the Planning Commission hearing. One speaker at the hearing displayed photographs showing traffic backed up on Hutton Road between the hours of 4:30 and 5:30, and expressed concerns that traffic from the project would add to this congestion causing further delays and traffic safety concerns.

**Staff Response:** In response to concerns raised at the South County Advisory Council, the applicant submitted a traffic study (Orosz Engineering Group; April 13, 2015) to evaluate the potential traffic and parking related impacts of the project. The traffic study estimated that the project would generate a total of 95 daily trips with 10 PM peak hour trips (3 toward the site and 7 away from the site) and no AM peak hour trips due to the proposed hours of operation (opening at 11 AM). There would be a maximum of 5 vehicle trips leaving the project site and traveling in any one direction (i.e. north or south on Hutton Road). The traffic study concluded "At these trip levels, the project would not noticeably impact the road system operation. Therefore based on the amount of peak hour traffic associated with the project site, no significant impacts would be created with the addition of the project traffic on existing or future traffic conditions." Both Cal Trans and County Public Works have reviewed and concur with the findings of the traffic study.

The traffic study also determined that there would be adequate onsite parking for the proposed dispensary. Based on the proposed floor plan, the project would require a total of 6 spaces. The site plan provides 11 dedicated parking spaces.

The Planning Commission discussed modifying the hours of operation so traffic from the dispensary does not add to traffic from the neighboring Santa Maria Raceway, but ultimately a majority of the Commission decided that it wasn't necessary to do so because the small amount of traffic generated by the project would not significantly add to existing congestion.

**Issue #3: Medical marijuana is illegal under federal law. Dispensaries have been banned in central coast cities.** One of the letters referenced in the appeal points out that marijuana is illegal in the United States and is classified under the Controlled Substances Act (CSA) of 1970 as a Schedule I substance meaning it's not approved for medical use and has a high potential for abuse. The same letter states that medical marijuana dispensaries are illegal in the cities of Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, and Santa Maria.

**Staff Response:** While marijuana is still classified as a Schedule I substance under federal law, California voters approved Proposition 215 in 1996 exempting certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2004, Senate Bill 420 became law and enacted the Medical Marijuana Program Act (MMP). The MMP requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

According to the 2008 California Attorney General Guidelines, California laws allowing for medical marijuana use do not conflict with federal law:

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML*). Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (*2008 Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*)

On August 1, 2006 the Board of Supervisors authorized the San Luis Obispo County Public Health Department (PHD) to implement the State Medical Marijuana Identification Card (MMIC) program. The proposed fee ordinance was introduced on October 24, 2006. The Board of Supervisors adopted the fee schedule on November 14, 2006 and the program commenced on December 14, 2006.

While the courts have upheld local bans on "brick and mortar" medical marijuana dispensaries, San Luis Obispo County opted to adopt an ordinance allowing for dispensaries that meet certain location criteria and operation standards. On February 6, 2007, the Board of Supervisors adopted Ordinance Number 3114 relating to the establishment of medical marijuana dispensaries, which amended the Land Use Ordinance by adding a new Section 22.30.225 to govern dispensary applications. As described above, the proposed project was found by the Planning Commission to comply with this section of the ordinance.

On October 9, 2015, the Governor signed AB 266, AB 243 and SB 643 which created a regulatory framework for the cultivation, manufacturing, testing, distribution, dispensing and delivery of commercial medical marijuana in California. These new laws will govern the future activities of an approved dispensary in the future when the State has officially staffed the new Bureau of Medical Marijuana and created new regulatory requirements authorized by the legislation. Under condition #20, the project would be required to comply with all state laws applicable to its operation.

**Issue #4: The proposed project would negatively impact the community of Nipomo.** The overarching theme of the correspondence in the appeal is that the proposed medical marijuana dispensary would adversely impact the community character of Nipomo. The 16 page opposition letter begins with, "A medical marijuana dispensary will be detrimental to the public health, safety and welfare of the community. A medical marijuana dispensary will adversely impact the quality of life in the community." The letter continues to state that the dispensary will increase crime, traffic, loitering, littering, trespassing, graffiti, noise, marijuana odors, and marijuana trafficking. It says "Nipomo will be known as a green light district, a place to buy and sell marijuana, instead of a place to raise a family."

**Staff Response:** The proposed project is located in a predominantly commercial / industrial area three miles south of the central business district and the majority of residential neighborhoods of Nipomo. The project site is separated from the Nipomo urban reserve area by a large expanse of agricultural land, sparsely developed rural parcels, and the Santa Maria Raceway. Other land uses in the same business park as the project include Central Coast Industries (a rental company) and offices for Stanley Security. Other surrounding uses within 1,000 feet of the project include an RV rental business, Santa Maria Tire, Cleaning Supply Warehouse, and a pest control business.

The nearest residential neighborhood is the Vista del Rio subdivision (Costa Vista Estates). Costa Vista Estates is located about 1,500 feet to the west (currently the nearest developed parcel in the subdivision is located about 2,500 feet away, but the closest vacant residential parcel is 1,500 feet away). The two uses are not visible from each other due to the intervening Nipomo Creek and a significant elevation change. Due to these specific landforms and existing roads, the driving distance between the two uses is nearly one mile. Attached to the appeal is a petition with 36 signatures from Costa Vista Estates homeowners opposing the project due to concerns that the dispensary would lead to increased crime levels.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has reviewed the resolution as to form and legal effect. The project was referred to the County Sheriff's Department, Public Works, Cal Trans, and the South County Advisory Council.

#### **FINANCIAL CONSIDERATIONS**

The appellant paid the required appeal fee of \$850.

#### **RESULTS**

Denial of the appeal would allow for the proposed medical marijuana dispensary to be established at 2122 Hutton Road. In accordance with condition #14, the applicant would be required to return to the Planning Commission in two years for an evaluation of how the dispensary has been operating and to determine condition compliance.

This appeal hearing is consistent with the countywide goals of promoting well-governed and livable communities.

#### **ATTACHMENTS**

1. Board of Supervisors Resolution with Findings and Conditions
2. Appeal Form with Attachments
3. July 9, 2015 Planning Commission Minutes
4. July 9, 2015 Planning Commission Staff Report
5. Location Map